

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
) 8:09CR26
Plaintiff,)
)
v.) ORDER
CONWAY A. HAMPTON,)
)
Defendant.)
_____)

This matter is before the court on defendant's motion to appeal, Filing No. 132, regarding this court's order, Filing No. 129, denying defendant's motion to reduce his sentence with regard to the crack cocaine guideline amendment. The court found the mandatory minimum applied in this case and the amendment did not assist the defendant. Filing No. 129.

Upon review of the record, and the defendant's notice of appeal, the court finds that the defendant's appeal is frivolous and lacks merit. See [Neitzke v. Williams, 490 U.S. 319, 325 \(1989\)](#) ("[A]n appeal on a matter of law is frivolous where [none] of the legal points [are] arguable on their merits.") (internal quotations and citations omitted). For the reasons stated in the court's order, Filing No. 129, the application of the retroactive crack cocaine guidelines of 2011 does not serve to reduce the defendant's sentence any further, because this court has already sentenced the defendant to the mandatory minimum. Consequently, the court finds the defendant's appeal of the denial of his motion is frivolous because it "lacks an arguable basis either in law or in fact." [Neitzke, 490 U.S. at 325.](#)

Accordingly, the court finds the defendant is not entitled to proceed in forma pauperis.

SO ORDERED.

DATED this 9th day of April, 2012.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge